No. 10729

United States
Circuit Court of Appeals
For the Ninth Circuit.

ZEILA BARR,

Appellant,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

FILED
SEP 25 1944
PAUL P. O'BRIEN,
CLERK

Rotary Colorprint, 55 Eleventh Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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In the Superior Court of the State of California, In and for the City and County of San Francisco

No. 317431

ZEILA BARR,

Plaintiff,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Defendant.

COMPLAINT

Now comes the plaintiff above named and for cause of action against the defendant above named alleges:

I

That during all of the times herein mentioned defendant has been and now is a corporation organized and existing under and by virtue of the laws of the State of New York.

II

That on or about the 28th day of June, 1926, defendant above named, in consideration of a premium and for other good and valuable considerations then paid by Arthur Barr, deceased, to defendant, then and there insured the life of said Arthur Barr, deceased, and executed and delivered to said Arthur Barr, deceased, a policy of insurance wherein and whereby said defendant agreed to and did insure the life of said Arthur Barr; that a photostat which is a full, true and correct copy of said policy of in-

surance [2*] is attached hereto marked Exhibit "A", is hereby referred to and is hereby made a part hereof as though the same were set forth herein in full.

III

That in and by said policy of insurance defendant agreed to pay to plaintiff who was then and there the wife of said Arthur Barr, deceased, as beneficiary under the terms of said policy of insurance the sum of Ten Thousand Dollars $10,000) upon the death of said Arthur Barr, deceased, and an additional Ten Thousand Dollars ($10,000) in the event that the death of said Arthur Barr, deceased, resulted from accident upon proof that the death of said Arthur Barr, deceased, resulted solely from bodily injuries caused directly, exclusively and independently of all other causes by external, violent and purely accidental means.

IV

That said Arthur Barr, deceased, paid all premiums required to be paid by said policy and contract of insurance and duly performed all of the conditions and requirements on his part to be performed by said contract and policy of insurance; that plaintiff duly performed all of the conditions and requirements on her part required to be performed by said contract and policy of insurance;

*Page numbering appearing at foot of page of original certified Transcript of Record.

that ever since said 28th day of June, 1926, said contract and policy of insurance has been and now is in full force and effect.

V

That on or about the 31st day of May, 1942, said Arthur Barr received bodily injuries caused directly, exclusively and independently of all other causes by external, violent and purely accidental means, to-wit, a tick bite, which said injuries directly, exclusively and independently of all other causes resulted in and caused the death of said Arthur Barr on the 6th day of June, 1942. [3]

VI.

That plaintiff above named gave to defendant above named, in writing, the notices and furnished the proof required by said policy of insurance of said accidental death of said Arthur Barr and made demand on defendent for the payment of the total sum of Twenty Thousand Dollars ($20,000) payable as aforesaid under the terms of said contract and policy of insurance; that defendant has paid to plaintiff the sum of Ten Thousand Dollars ($10,000) but has failed, refused and neglected to pay said additional amount of Ten Thousand Dollars ($10,000) as required by said contract and policy of insurance, and no part of said additional sum of Ten Thousand Dollars ($10,000) has been paid plaintiff as required by said contract and policy of insurance or otherwise, and the whole thereof is now due, owing and unpaid.

Wherefore, plaintiff prays judgment against defendant for the sum of Ten Thousand Dollars ($10,000), lawful money of the United States of America, together with interest thereon at the rate of seven percent (7%) per annum from the 6th day of June, 1942, together with costs of suit herein, and for such other relief as to the court may seem meet and just in the premises.

KEITH R. FERGUSON
JOHN J. TAAFFE
Attorneys for Plaintiff.

State of California
City and County of San Francisco—ss.

John J. Taaffe, being duly sworn on behalf of the plaintiff in the above entitled action, says:

That he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true; that said plaintiff is absent from the City and County of San Francisco, State of California, where her attorney John Taaffe has his office, and that affiant is one of the attorneys for plaintiff and therefore makes this affidavit of verification.

JOHN J. TAAFFE

Subscribed and sworn to before me this 30 day of March, 1943.

[Seal] JACOB S. MEYER
Court Commissioner of the City and County of San Francisco, State of California.

[Endorsed]: Filed Mar. 31, 1943. H. A. van der Zee, Clerk, by D. E. Dunn, Deputy Clerk.

[Endorsed]: Filed May 8, 1943. U. S. District Court. [4]

THE

Equitable

LIFE ASSURANCE SOCIETY



OF THE UNITED STATES

NUMBER 4,090,887

FACE AMOUNT $10,000

HENRY BALDWIN HYDE FOUNDER. JULY 25 1859

HEREBY INSURES THE LIFE OF

--- ARTHUR BARR ---

(herein called the Insured)

AND AGREES TO PAY AT ITS HOME OFFICE IN THE CITY OF NEW YORK

--- TEN THOUSAND DOLLARS ---

(the face of this policy)

TO

his wife --- ZELLA BARR --- Beneficiary

(with the right to the Insured to change the Beneficiary or assign this policy)

upon receipt of due proof of the death of the Insured, provided premiums have been duly paid and this policy is then in force and is then surrendered properly released; and IN EVENT OF DEATH FROM ACCIDENT THE SOCIETY AGREES TO INCREASE THE AMOUNT SO PAYABLE to --- TWENTY THOUSAND DOLLARS ---, upon due proof that the death of the Insured resulted solely from bodily injuries caused directly, exclusively and independently of all other causes by external, violent and purely accidental means, subject to the terms and conditions contained on the third page hereof. AND FURTHER, IF THE INSURED BECOMES WHOLLY AND PERMANENTLY DISABLED BEFORE AGE 60 the Society will waive subsequent premiums and pay to the Insured a DISABILITY-ANNUITY of --- ONE HUNDRED DOLLARS --- A Month, subject to the terms and conditions contained on the third page hereof.

This insurance is granted in consideration of the payment in advance of Four hundred twenty-seven and 30/100 Dollars and of the payment annually thereafter of a like sum upon each eighteenth day of June until TWENTY full years' premiums shall have been paid, or until the prior death of the Insured. These payments include a n annual premium of $14.00 for the Double Indemnity and of $21.80 for the Total and Permanent Disability provision granted under this contract. Upon any anniversary of this policy said Double Indemnity and Disability provisions may be discontinued by returning this policy to the Society for proper endorsement, with a written request signed by the Insured (or assignee if any) and thereafter the payment of the premiums for such provisions shall not be required.

THE PRIVILEGES and CONDITIONS stated on the subsequent pages hereof form a part of this contract as fully as if recited at length over the signatures hereto affixed.

Executed this twenty-eighth day of June, 19 26, at the Home Office of the Society in New York.

EXAMINED BY

W. Alexander Secretary. H. A. Day President.

5 Asst Secretary. Asst Registrar.

3122. 31, 12. Ins. Acc. & Death. 20 P. L.—P. U.

INSURANCE PAYABLE AT DEATH. DOUBLE INDEMNITY FOR FATAL ACCIDENTS.

TOTAL AND PERMANENT DISABILITY PROVISION: WAIVER OF PREMIUMS—MONTHLY DISABILITY-ANNUITY WITHOUT DEDUCTION OF AMOUNT.

PREMIUMS PAYABLE FOR 20 YEARS OR UNTIL PRIOR DEATH. ANNUAL DIVIDENDS.

PRIVILEGES AND CONDITIONS.

THIS POLICY SHALL BE INCONTESTABLE

after one year from its date of issue, provided premiums have been duly paid, subject to the provisions as to age stated on the third page hereof.

THERE ARE NO RESTRICTIONS

under this policy, while in full force, on travel, residence, occupation, nor on military or naval service, except those relating to Double Indemnity and Disability, on the third page hereof.

ANNUAL DIVIDENDS.

The proportion of divisible surplus accruing upon this policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter such surplus as shall have been apportioned by the Society to this policy shall at the option of the Insured (or assignee if any), be either—

1. Paid in Cash; or, 2. Applied toward the payment of premiums; or, 3. Applied to the purchase of paid-up Additional Insurance (without double indemnity or total and permanent disability benefits); or, 4. Left to accumulate at 3½ interest, compounded annually. If a higher average annual rate is earned, this accumulation may be increased by an interest dividend as determined and apportioned by the Society. Such accumulations will be payable upon the maturity of this policy or on any anniversary of its register date.

Unless the Insured (or assignee if any) shall elect one of the foregoing options within three months after the mailing by the Society of a written notice requiring such election, the dividend shall be applied to the purchase of paid-up Additional Insurance (Option 3). This Additional Insurance may be surrendered by the Insured at any time for the cash value thereof, which shall not be less than the original Cash Dividend.

POST-MORTEM DIVIDEND.

In the event of the death of the Insured after the first policy year, and while this policy is in full force and effect, a cash dividend will be allowed for the fraction if any, of the then current policy year elapsed before such death.

PROVISIONS RELATING TO LOANS AND SURRENDER VALUES.

LOANS. At any time, while this policy is in full force, after three full years' premiums have been paid, the Society will advance to the Insured (or assignee if any), on proper assignment and delivery of this policy, and on the sole security hereof a sum which, with interest, shall not exceed the cash value at the end of the then current policy year (as stated in the opposite Table), less any indebtedness to the Society hereon, provided all premiums or instalments of the same have been fully paid to the end of the then current policy year. Interest shall be at the rate of 6% per annum, and shall be payable on the premium anniversary date of this policy. The loan may be increased by the cash value of dividend additions credited to this policy, if any. If the loan is for a purpose other than to pay premiums on policies in the Society, the granting of the same may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor. Failure to repay such loan or to pay interest thereon shall not avoid this policy unless the total indebtedness hereon shall equal the total loan value, nor until thirty-one days after notice shall have been mailed to the Insured, and to the assignee of record if any, to their addresses last known to the Society.

OPTIONS ON SURRENDER OR LAPSE. After three full years' premiums have been paid hereon, upon any subsequent default in the payment of any premium or instalment thereof, and within three months after such default, this policy may be surrendered by the Insured (or assignee if any) who may elect one of the following options:

(a) To receive the Cash Surrender Value of this policy; or

(b) To purchase non-participating paid-up life insurance payable at the same time and on the same conditions as this policy, but without double indemnity or total and permanent disability benefits; or

(c) To continue the insurance for its face amount (and any outstanding dividend additions) as paid-up extended term insurance for the period shown in the opposite Table, or for such further period, as the dividend additions (if any) will purchase, but without future participation, or right to loans, or double indemnity or total and permanent disability benefits.

In the event of default in the payment of any premium or instalment thereof after this policy has been in force three full years, if the Insured (or assignee if any) does not select one of said options within three months of such default, the insurance shall be continued as provided under Option (c).

If there be any indebtedness against this policy, the cash surrender value shall be reduced thereby, the paid-up insurance shall be reduced proportionately, and the extended term insurance shall be for the face amount of the policy less the indebtedness and for such period as the reduced cash value will purchase.

The Insured's right to change, assign or terminate this policy shall extend to any paid-up insurance accruing hereunder.

BASIS OF COMPUTATION. The RESERVE for which funds are to be held upon this policy shall be computed upon the American Experience Table of Mortality with interest at 3% by the net level premium method.

The values stated in the opposite Table are mathematical equivalents and each is equal to the full RESERVE at the end of then current policy year, on the basis stated in the preceding paragraph, less a surrender charge of not more than 1½% of the face of this policy until the completion of the tenth policy year, at which time and thereafter there is no deduction made as a surrender charge, except that fractions of a month and fractions of a dollar are not allowed.

PAYMENT OF SURRENDER VALUE. The granting of any surrender value under this policy may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor.

TABLE OF LOAN AND SURRENDER VALUES FOR EACH $1,000 OF FACE AMOUNT OF THIS POLICY.

THE TERM FOR WHICH EXTENDED INSURANCE WILL BE GRANTED IS THE SAME WITHOUT REGARD TO THE AMOUNT OF THE POLICY.

After policy has been in force	LOAN & CASH VALUE FOR EACH $1,000 OF FACE AMOUNT OF POLICY. The Loan Value is the Cash Value less Interest to the premium anniversary date.	PAID-UP LIFE INSURANCE FOR EACH $1,000 OF FACE AMOUNT OF POLICY. Without Double Indemnity or Disability Benefits.	PAID-UP EXTENDED TERM INSURANCE. Without Double Indemnity or Disability Benefits.	
			Years.	Months.
2 Years	$ 28	$ 62	3	1
3 "	$ 56	$124	6	3
4 "	$ 81	$178	9	0
5 "	$110	$235	11	9
6 "	$136	$286	13	11
7 "	$166	$342	16	0
8 "	$196	$397	17	9
9 "	$228	$452	19	3
10 "	$261	$507	20	7
11 "	$292	$557	21	7
12 "	$324	$606	22	5
13 "	$357	$655	23	3
14 "	$391	$704	24	0
15 "	$426	$753	24	10
16 "	$462	$802	25	9
17 "	$500	$851	26	9
18 "	$539	$900	28	1
19 "	$579	$950	30	2
20 "	$621	—Policy fully Paid-up—		
21 "	$632			
22 "	$643			
23 "	$655			
24 "	$666			
25 "	$678			
30 "	$734			

The loan obtainable at the end of any given year may be secured during that year, if the premium for the entire year has been paid.

Loan and Surrender values for later years will be on the same basis, and will be furnished on request.

These values are exclusive of dividend additions, and are for completed policy years. Due allowance will be made for any fractional premium paid beyond completed policy years.

If there are any dividend additions to this policy, these values will be increased thereby. They will be reduced, if there is any indebtedness hereon.

L 20

FOR AGE 36

NOTE: The foregoing Loan and Surrender value provisions are hereby extended to become operative after 2 full years' premiums shall have been paid, for amounts as stated above. The Basis of Computation is the same as hereinbefore stated, except that for the surrender value at the end of the second policy year a surrender charge of not more than 2% of the face of this policy is made. S. 840

PRIVILEGES AND CONDITIONS.

SPECIAL PROVISIONS REGARDING DOUBLE INDEMNITY AND TOTAL AND PERMANENT DISABILITY.

DOUBLE INDEMNITY IN CASE OF DEATH FROM ACCIDENT.

The increased amount of insurance as stipulated on the face hereof, in case of accidental death shall be payable upon receipt of due proof that the death of the Insured occurred while this policy was in full force and effect, and resulted solely from bodily injuries, caused directly, exclusively and independently of all other causes by external, violent and purely accidental means, provided that death shall ensue within 90 days from the date of such injuries and shall not be the result of or be caused directly or indirectly by self-destruction, sane or insane, disease or illness of any kind, physical or mental infirmity, any violation of law by the Insured, military or naval service of any kind in time of war or by engaging as a passenger or otherwise in submarine or aeronautic expeditions. The Society, in order to determine whether death occurred within the meaning of this provision, shall, in the absence of legal restrictions, have the right and opportunity to make an autopsy.

TOTAL AND PERMANENT DISABILITY.

(I) DISABILITY BENEFITS before age 60 shall be effective upon receipt of due proof, before default in the payment of premium, that the Insured became totally and permanently disabled by bodily injury or disease after this policy became effective and before its anniversary upon which the Insured's age at nearest birthday is 60 years, in which event the Society will grant the following benefits:—

(a) **WAIVE PAYMENT OF ALL PREMIUMS payable upon this policy falling due after the receipt of such proof and during the continuance of such total and permanent Disability; and**

(b) **PAY TO THE INSURED A MONTHLY DISABILITY-ANNUITY as stated on the face hereof; the first payment to be payable upon receipt of due proof of such Disability and subsequent paymants monthly thereafter during the continuance of such total and permanent Disability.**

(NOTE:—Any Premiums so waived and any Disability-Annuity so paid *shall not be deducted* from any amount payable in any settlement of this policy.)

DISABILITY shall be deemed to be TOTAL when it is of such an extent that the Insured is prevented thereby from engaging in any occupation or performing any work for compensation of financial value, and such TOTAL DISABILITY shall be presumed to be PERMANENT when it is present and has existed continuously for not less than three months; and, further, the entire and irrecoverable loss of sight of both eyes, or the severance of both hands at or above the wrists, or of both feet at or above the ankles, or of one entire hand and one entire foot, will of themselves be considered as TOTAL AND PERMANENT DISABILITY within the meaning of this provision.

(II) DISABILITY BENEFIT after age 60.

In case the Insured after attaining age sixty, and while this policy is in full force and effect, becomes totally and permanently disabled as above described, and furnishes due proof thereof, the Society, subject to the conditions above stated, will on each subsequent anniversary date of this policy during the continuance of such disability waive payment of the premium, if any, for the ensuing policy year, whereupon the amount of insurance shall become reduced by the amount of premiums so waived and subsequent premiums and loan and surrender values shall be reduced proportionately.

(III) RECOVERY FROM DISABILITY.

The Society shall have the right at any time or times during the first two years after receipt of such proof of disability, but thereafter not more frequently than once a year, to require proof of the continuance of such total disability. If the Insured shall fail to furnish satisfactory proof thereof, or if it appears at any time that the Insured has become able to engage in any occupation or perform any work for compensation of financial value, no further premiums will be waived and no further Disability-Annuity payments will be made hereunder on account of such disability.

(IV) MILITARY OR NAVAL SERVICE. Disability resulting directly or indirectly from military or naval service in time of war is not a risk assumed by the Society.

BENEFICIARY. If there is no written assignment of this policy in force and on file with the Society:

(a) The Insured may from time to time during its continuance, change the beneficiary or beneficiaries by a written request, upon the Society's blank, filed at its Home Office, but such change shall take effect only upon the endorsement of the same hereon by the Society; or,

(b) the Insured (or assignee if any) may, without the consent of the beneficiary, surrender, assign or pledge this policy and receive, exercise and enjoy every benefit, right and privilege conferred upon the Insured by the terms hereof.

If the executors, administrators or assigns of the Insured be not expressly designated as beneficiary and if there be no other beneficiary living at the death of the Insured, payment will be made to the surviving children of the Insured; or should none survive, then to the Insured's executors, administrators or assigns.

ASSIGNMENTS. No assignment of this policy shall be binding upon the Society unless in writing and until filed at its Home Office. The Society assumes no responsibility for the validity of any assignment.

PAYMENT OF PREMIUMS. All premiums are payable in advance at the Home Office, or to any Agent or Cashier of the Society, upon delivery on or before their due date, of a receipt signed by the President, a Vice-President, Secretary or Treasurer, and countersigned by said Agent or Cashier. This policy is based upon the payment of premiums annually; but premiums may be paid, subject to the Society's written approval, in semi-annual or quarterly instalments at the Society's adopted rates for fractional premiums, provided that in the event of the death of the Insured any unpaid portion of the premium for the then current policy year shall be deducted from the amount payable hereunder.

GRACE. A grace of thirty-one days, subject to an interest charge at the rate of 5% per annum, will be granted for the payment of every premium after the first, during which period the insurance hereunder shall continue in force. If death occur within the days of grace, the premium for the then current policy year or any unpaid instalments thereof shall be deducted from the amount payable hereunder.

Except as herein expressly provided, the payment of any premium or instalment thereof shall not maintain this policy in force beyond the date when the succeeding premium or instalment thereof becomes payable.

REINSTATEMENT. If this policy shall lapse in consequence of the non-payment of any premium when due, it may be reinstated at any time upon the production of evidence of insurability satisfactory to the Society, and the payment of all overdue premiums, with interest at 5% per annum, and upon the payment with interest or the reinstatement of any indebtedness to the Society secured by this policy.

AGE. If the age of the Insured has been misstated, any amount payable under any of the provisions of this contract, shall be that amount which the premium charged would have purchased at the Society's rates in use at the register date hereof for the Insured's correct age.

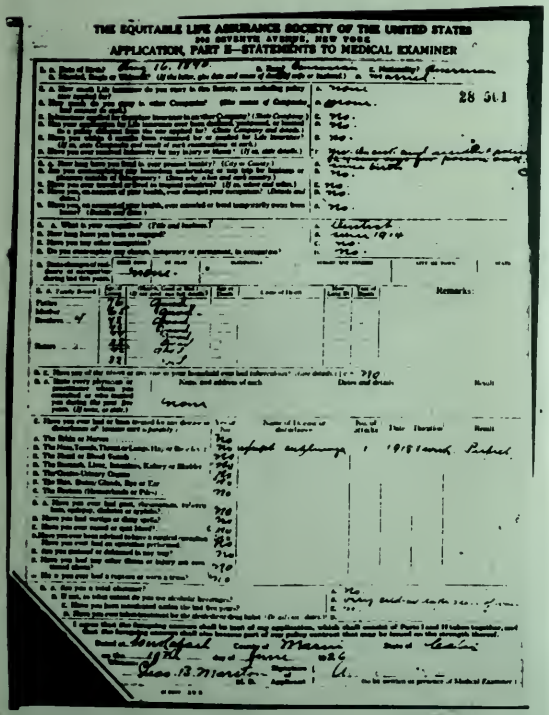
THE CONTRACT. This policy, and the application therefor, a copy of which is endorsed hereon or attached hereto, constitute the entire contract between the parties. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid this policy or be used in defense of a claim thereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued

Self-destruction, sane or insane, within one year from the date of issue hereof, is a risk not assumed by the Society under this policy. In such an event the Society's liability shall be limited to an amount equal to the premium actually paid.

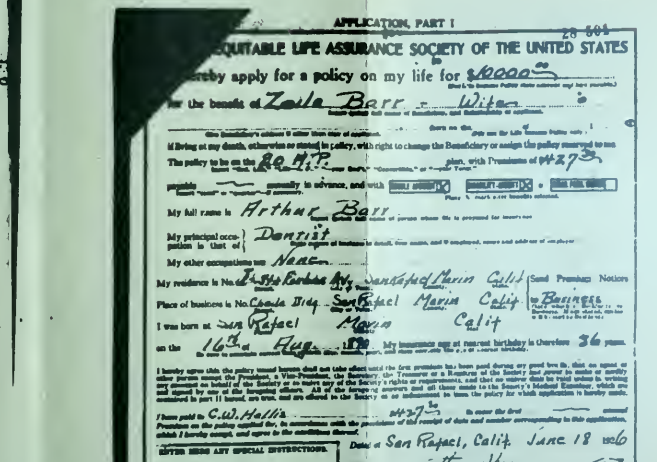
AGENTS are not authorized to modify, or in event of lapse, to reinstate this policy, or to extend the time for payment of any premium or instalment thereof.

THE MODES OF SETTLEMENT available at the maturity of this policy are stated on the fourth page hereof and constitute a part of this contract.

H. A. Day President.



THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES
No. 59 WASTE, AT DEPT., NEW YORK
APPLICATION, PART II—STATEMENTS TO MEDICAL EXAMINER



APPLICATION, PART I

28 501

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

hereby apply for a policy on my life for $10000

for the benefit of Zelle Barr Wife

The policy to be on the 20 H.P. plan, with Premiums of $427

My full name is Arthur Barr

My principal occupation is that of Dentist

My residence is No. 24 Sta Barbara Ave, San Rafael Marin Calif

Place of business is No. Creole Bldg San Rafael Marin Calif

I was born at San Rafael Marin Calif

on the 16th day of Aug 1886 My insurance age at next birthday is therefore 36 years.

I hereby apply that this policy issued hereon shall not take effect until the first premium has been paid during my good health, that no agent or other person except the President, a Vice-President, the Secretary, the Treasurer or a Registrar of the Society has power to make or modify any contract on behalf of the Society or to waive any of the Society's rights or requirements, and that no waiver shall be valid unless in writing and signed by one of the foregoing officers. All of the foregoing answers and all those made to the Society's Medical Examiner, which are contained in part II hereof, are true, and are offered to the Society as an inducement to issue the policy for which application is hereby made.

I have paid to C.W. Hallis $427 in cash the first Premium on the policy applied for, in accordance with the conditions of the receipt of date and number corresponding to this application, which I hereby accept, and agree to the conditions thereof.

ENTER HERE ANY SPECIAL INSTRUCTIONS.

Dated at San Rafael, Calif June 18 1906

SIGNATURE OF APPLICANT Arthur Barr

Agency Wm Clay No. G. 457069

CHANGE OF BENEFICIARY REGISTER.

NOTE—ENTRIES IN THIS REGISTER ARE TO BE MADE ONLY BY THE SOCIETY AT ITS HOME OFFICE IN NEW YORK. NO OTHER ENTRIES WILL BE RECOGNIZED.

DATE ENDORSED | BENEFICIARY. | ENDORSED BY

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES. NEW YORK N.Y.

20-Payment Life Policy.

No. 4,090,887 G487069

ARTHUR BARR

FACE AMOUNT $ 10,000

AGE 36

Ann. PREMIUM $ 427.30

Including premium for

Double Ind. $ 14.00 and Disability $ 21.80

Register date: June 18th, 1926

Insurance payable at death.
Double Indemnity for fatal accidents.
Total and Permanent Disability Provision:
Waiver of Premiums—Monthly Disability-Annuity without Deduction at Maturity.
Premiums payable for 20 years or until prior death.—Annual Dividends.

San Francisco

GC

Disb. Ac. & Disab. 20 F. L.—P. V.

SERIES AD 62 Ac3-D5

IT IS NOT NECESSARY TO EMPLOY ANY PERSON, FIRM, OR CORPORATION TO COLLECT THE INSURANCE OR SECURE ANY BENEFIT UNDER THIS POLICY. WRITE DIRECT TO THE SOCIETY, 393 SEVENTH AVENUE, NEW YORK, OR COMMUNICATE WITH THE NEAREST AUTHORIZED AGENT OF THE SOCIETY WHOSE DUTY IT IS TO FACILITATE ALL SETTLEMENTS WITHOUT CHARGE.

FOURTH PAGE.

MODES OF SETTLEMENT AT MATURITY OF POLICY.

The Insured (or the beneficiary after the Insured's death in case the Insured shall have made no election) may, by written notice to the Society at its Home Office, elect to have the net sum due under this policy upon the death of the Insured, either paid in Cash; or,

OPTION 1. Left on deposit with the Society during the lifetime of the beneficiary, to be paid upon the death of the beneficiary, to the beneficiary's legal representatives or assigns. The Society guarantees to pay interest on this deposit during its continuance at the rate of 3%. If a higher average annual rate shall be earned by the Society, the amount may be increased by an interest dividend as determined and apportioned by the Society; or,

OPTION 2. Paid in a fixed number of Annual Instalments as set forth in the following table; or,

OPTION 3. Converted into a fixed Income to the beneficiary for life, consisting of the payment of a fixed amount as shown by the following table, annually for TWENTY years certain, and of the continuation of annual payments of like amount thereafter during the life of the beneficiary, provided that if this option be availed of, the Society will require satisfactory evidence of the age of the payee.

Under Options 2 and 3, the amounts payable are based upon an assumed rate of interest of 3%. If a higher average annual rate shall be earned by the Society, the amount of the instalments under Option 2 and of the first twenty instalments under Option 3 may be increased by an interest dividend as determined and apportioned by the Society.

If one of the foregoing options is elected, this policy must be surrendered upon its maturity and a supplementary contract issued for the purpose of carrying out said option; under Options 2 and 3 the supplementary contract is to be NON-COMMUTABLE, unless the Insured otherwise orders during lifetime by written notice to the Society at its Home Office.

TABLE OF INSTALMENTS FOR EACH $1,000.

OPTION 2. INSTALMENTS CERTAIN.				OPTION 3. LIFE INCOME. (20 YEARS CERTAIN)							
Number of Annual Instalments	Amount of each Instalment	Number of Annual Instalments	Amount of each Instalment	Age of Payee when policy matures	Amount of each Instalment	Age of Payee when policy matures	Amount of each Instalment	Age of Payee when policy matures	Amount of each Instalment	Age of Payee when policy matures	Amount of each Instalment
5	$212.00	25	$55.76	17 or under	$40.00	35, 36	$47.00	47	$54.00	57, 58	$61.00
10	$113.82	30	$49.53	18, 19, 20, 21	$41.00	37, 38	$48.00	48, 49	$55.00	59, 60	$62.00
15	$ 81.33	40	$42.00	22, 23, 24	$42.00	39, 40	$49.00	50	$56.00	61, 62	$63.00
20	$ 65.26	50	$37.73	25, 26, 27	$43.00	41	$50.00	51, 52	$57.00	63	$63.00
				28, 29, 30	$44.00	42, 43	$51.00	53	$58.00	64, 65, 66	$64.00
				31, 32	$45.00	44	$52.00	54, 55	$59.00	67, 68	$64.00
				33, 34	$46.00	45, 46	$53.00	56	$60.00	69 or over	$65.00

[Title of District Court and Cause.]

PETITION FOR REMOVAL OF CAUSE TO THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

To the Honorable, the Superior Court of the State of California in and for the City and County of San Francisco:

Your petitioner, The Equitable Life Assurance Society of the United States, a corporation, respectfully shows to this honorable court:

That it is the defendant in the above entitled suit, that said suit was heretofore brought by plaintiff above named in this court and it is now pending in said court; that summons was issued therein and served with a copy of the complaint upon your petitioner in the City and County of San Francisco, State of California, on March 31, 1943; that the time has not elapsed within which your [11] petitioner is required by the laws of the State of California or the rules of this court to answer or plead to said complaint of plaintiff; that your petitioner is informed and believes and therefore alleges that said plaintiff was at the time of the commencement of this suit and still is a citizen of the United States and of the State of California and a resident of the County of Marin, State of California, in the Southern Division of the District Court of the United States for the Northern District of California; that your peti-

tioner was at the time of the commencement of said suit and still is a citizen and a corporation existing under and by virture of the laws of and a resident of the State of New York and a non-resident of the State of California and qualified to do and doing business within said state as a foreign corporation.

Your petitioner further shows that the suit above entitled is a suit of a civil nature at law between citizens of different states, of which the District Courts of the United States are given jurisdiction, brought by plaintiff for the purpose of recovering from your petitioner the sum of $10,000, which plaintiff claims is owing to her under the provisions of an insurance contract, as more fully appears from the complaint on file in said suit; that your petitioner disputes the said claim of plaintiff and denies the said alleged liability, and that the matter in controversy between said plaintiff and your petitioner exceeds, exclusive of interest and costs, the sum of $3,000.

Your petitioner further shows that it has made and filed herein its bond as good and sufficient surety that it will within thirty (30) days from the date of the filing of this petition enter in the Southern Division of the District Court of the United States for the Northern District of California a certified copy of the record in this suit and [12] for the payment of all costs that may be awarded by said District Court if said District Court shall hold that said suit was wrongfully or improperly removed thereto; that your petitioner

desires to remove said cause to the Southern Division of the District Court of the United States for the Northern District of California.

Your petitioner therefore prays that this petition and said bond be accepted by this court and that the said suit be removed to said District Court pursuant to the statutes in said cases made and provided, that a transcript of the record herein be made by the clerk and certified to as provided by law, and that this court proceed no further in this suit.

And your petitioner will ever pray.

PILLSBURY, MADISON & SUTRO
NORBERT KORTE
Attorneys for Petitioner [13]

State of California,
City and County of San Francisco—ss.

Curtis G. Smith, being first duly sworn, deposes and says: That he is an officer, to wit, the cashier, of The Equitable Life Assurance Society of the United States, a corporation, the defendant in the above entitled action, and makes this affidavit for and on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to those matters that he believes it to be true.

CURTIS G. SMITH

Subscribed and sworn to before me this 7th day of April, 1943.

(Seal) FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 9, 1943. H. A. van der Zee, Clerk, By H. Brunner, Deputy Clerk.

[Endorsed]: Filed May 8, 1943. . S. District Court. [14]

[Title of District Court and Cause.]

ORDER FOR REMOVAL

It appearing to the satisfaction of this court that The Equitable Life Assurance Society of the United States, a corporation, defendant in the above entitled action, has this day filed its petition for removal of this cause to the Southern Division of the District Court of the United States for the Northern District of California in accordance with the statute therefor provided, and that said defendant has also this day filed its bond on removal, duly conditioned with good and sufficient surety as provided by law, and it appearing that said petition for removal and said bond were so filed before the presentation thereof to this court for acceptance; and it appearing that due and sufficient written notice of said petition and bond for removal has been given [15] to the plaintiff above named prior to the filing of the same; and it appearing that this is a proper cause for removal to said District Court;

Now, Therefore, it is hereby Ordered, Adjudged and Decreed that said petition and bond are hereby accepted and that this cause be and it is hereby removed to the Southern Division of the District Court of the United States for the Northern District of California, and the clerk of this court is hereby directed to make up and certify a copy of the record in said cause for transmission to said District Court forthwith.

Done in open court this 9th day of April, 1943.

THERESA MEIKLE

Judge of said Superior Court

[Endorsed]: Filed April 9, 1943. H. A. van der Zee, Clerk, by H. Brunner, Deputy Clerk.

[Endorsed]: Filed May 8, 1943. [16]

State of California,
City and County of San Francisco—ss.

CERTIFICATE OF CLERK

I, H. A. van der Zee, county clerk of the City and County of San Francisco and ex officio clerk of the State of California in and for the City and County of San Francisco, do hereby certify that the papers attached hereto consisting of:

Complaint;

Demurrer;

Notice of intention to file petition and bond for removal and of presentation to court for acceptance;

Petition for removal of cause to the Southern

Division of the District Court of the United States for the Northern District of California;

Bond on removal; and

Order for removal,

constitute a full, true, and correct copy of the record in the within entitled action now on file in my office.

Dated: May 6th, 1943.

(Seal) H. A. VAN DER ZEE,
County Clerk.
By H. BRUNNER
Deputy

[Endorsed]: Filed May 8, 1943. U. S. District Court. [17]

In the District Court of the United States for the Northern District of California, Southern Division

No. 22613-R

ZEILA BARR,

Plaintiff,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Defendant.

ANSWER [18]

Comes now he Equitable Life Assurance Society Of The United States, defendant above named, and

for its answer to plaintiff's complaint on file herein, denies, and avers as follows:

I

Answering the allegations of paragraphs II and III of said complaint, defendant admits that on June 28, 1926, in consideration of a premium paid to it by Arthur Barr and for other good and valuable consideration it executed and delivered to said Arthur Barr a policy of insurance, a true copy of which is attached to the complaint herein, marked "Exhibit A," and denies generally and specifically, each and every, all and singular, the remaining allegations of said paragraphs II and III inconsistent with said allegations hereinabove specifically admitted.

II

Answering the allegations of paragraph IV of said complaint, defendant admits that said Arthur Barr paid all premiums required to be paid under said policy of insurance up to June 18, 1942, and that said policy was in full force from June 28, 1926, to date, and denies generally and specifically, each and every, all and singular, the remaining allegations of said paragraph IV not hereinabove specifically admitted.

III

Answering the allegations of paragraph V of said complaint, defendant admits that said Arthur Barr died on June 6, 1942, avers that it has no knowledge, information, or belief sufficient to enable it to answer the allegations of said paragraph V that on

ATTENTION IS DIRECTED TO THE NOTE AND INSTRUCTIONS ON PAGE 2

PROOFS OF DEATH

CLAIMANT'S STATEMENT

NOTICE IS HEREBY GIVEN TO

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

that Barr, Arthur (Dr.) of (Street) San Rafael (City or Town)

County of Marin and State of California whose life was insured by said Society, under its

Policy No 4090 887 dated June 18th, 1926 for the sum of

Ten thousand and no/100 Dollars has died and in proof of claim under said Policy , the undersigned does answer as follows:

1. Occupation of the deceased (Answer →) Dentist

2. *a.* Date of birth of the deceased — *a.* San Rafael Calif Aug 16. 1890
 b. Exact place of birth — *b.* Aug 16. 1890 (Town) San Rafael Calif (County or Parish) (State)
 c. Parents' names, and mother's maiden name — *c.* WILLIAM BARR - AMELIA LANG
 d. From what source, such as family record, certificate of birth or other record, is the date of birth derived? — *d.* Birth certificate

3. Place and date of death — San Rafael, Calif June 6. 1942

4. How many years had you known the deceased? — I had known the deceased for 26 years

5. State all facts in connection with cause and circumstances of death — On Sunday last starting about noon 27. 1942 Dr Barr had a chill on his face. Came home got a check up June 2. 1942 & Dr. Long thought he had a cold

6. *a.* State the precise duration of the last illness of the deceased — *a.* 2 days - Became ill night of June 3rd 1942
 b. Date he last worked — *b.* Taken to bed & completely June 4. 1942 - Died 8:22 last visited June 3. 1942 June 6. 1942

7. *a.* State your relationship, if any, to the deceased — *a.* Widow
 b. State in what capacity, whether as beneficiary, assignee or otherwise, you claim title to the Insurance — *b.* Beneficiary
 c. State your date of birth — *c.* Oct 4. 1898
 d. State your residence — *d.* FOREST AVE & 1 st San Rafael Calif
 e. State who has the policy and if other than yourself give reasons — *e.* Have Policies in my possession

8. Had the deceased any other life or accident Insurance? If so, state in what companies and for what amounts, and the dates of the respective policies.

Company	Amount of Policy	Date of Issue
Travelers	5000 accident	June 2. 1937
Travelers	10,000 accident	Feb 26. 1942
	10,000 accident	

WILLIAM BARR + ELINOR BARR Wife + Daughter ARE NAMED BENEFICIARIES

9. Unless the policy specifically provides for an income, instalment or interest settlement, state whether cash or optional settlement is preferred. See "Modes of Settlement" on page 4 — Will notify later

10. Names and addresses of all physicians who attended the deceased during his last illness and during five years prior thereto:

Names	Addresses	Dates of Attendance	Disease or Condition
Thomas Hanson	1016 B St San Rafael	June 4. 5. 6. 1942	Entered Stomach & Intestinal Tract
ALFRED ~~Arthur~~ Reed	240 Post St San Francisco	June 2. 3. 1942	Consultation Dr. Hanson
~~Lars~~ H. Bahrs	Fitzhugh Bldg San Francisco	June 2. 1942	Portions checked

Dated at San Rafael, California (Claimant sign here) Zella H. Barr

this 23rd day of June 1942

State of California }
County of Marin }

On this 23rd day of June 1942

personally appeared before me the above named Zella H. Barr (Claimant's Name) who is known to me, and who subscribed the foregoing before me and made oath that the foregoing notice and answers to the questions are true and full, to the best of Her knowledge, recollection and belief.

(Notary sign here) Robert L. Martinelli

NOTARY PUBLIC in and for the County of Marin, State of California

NOTARY SEAL

B. C. 274—40-12

21

EXHIBIT A

EXHIBIT B

NOTE

The issuance of these blanks is not an admission of the existence of any insurance, and is without prejudice to the Society's legal rights in the premises.

INSTRUCTIONS

The Claimant's and Funeral Director's Statements must be sworn to before an officer duly authorized to administer oaths.

If the Policy is payable to the legal representatives of the Insured, the statement must be made by the executor or administrator, a court certificate of whose appointment must be furnished.

If the Policy is payable to a named beneficiary of legal age, or to an assignee, the claimant's statement must be made by such beneficiary or assignee, as the case may be; and the papers must clearly show each and every claimant to be of legal age.

If the Policy is payable to a minor, the claimant's statement must be made by the guardian of the property, a court certificate of whose appointment must be furnished.

When a policy payable to a designated beneficiary, if surviving, has, by the death of such beneficiary, become payable to another beneficiary, proof of the death of the first named beneficiary must be furnished in the form of an affidavit by a person, preferably the claimant, who was well acquainted with such deceased beneficiary and who knows it to be a fact that such beneficiary is dead.

If the Policy is payable to children or any other group of persons whose names are not specifically mentioned in the Policy, an affidavit must be furnished showing the number of children or other persons in the group and their names and dates of birth.

The payment of the claim will be facilitated and expedited by the filing with the Proofs of Death, of the Policy and all original assignments and releases; in fact such documents are required by the Society before the issue of any supplementary contract provided for in the Policy or under the "Modes of Settlement" described on page 4.

The approval of the claim may be further facilitated by furnishing a newspaper obituary article and death notice, and, where possible, a Board of Health certificate of death. When such death certificate is furnished, the Funeral Director's Statement is unnecessary.

The intervention of a third person is not necessary for the collection of the claim, and payment to any person for pretended services in regard thereto is entirely unnecessary. [22]

ATTENDING PHYSICIAN'S STATEMENT

Data may be given separately where space insufficient for complete answer

1. a. Name of the deceased in full? Arthur Barr

b. Residence at time of death? No Baker I Street San Rafael City or Town State California

c. Occupation? Dentist d. Age of the deceased and basis of your knowledge thereof? 51

2. How long had you known the deceased? 15 yrs. When were you first consulted by deceased in last illness? June 4 1942

3. By whom was the deceased referred to you? None

4. Give particulars of each condition for which you treated or advised the deceased prior to last illness with date, duration and result:

Nature of Condition	Date	Duration	Result
None.			

5. Date of death? June 6, 1942 Place of death? Cottage Hospital - San Rafael, Calif

6. a. What was the immediate cause of death? a. acute bronchial pneumonia

b. How long, in your opinion, did the deceased suffer from this disease or impairment? b. two days.

c. What were the contributory causes of death? Give, as nearly as you can by dates, the duration of each.

Disease or Impairment	Duration
None	From ... to ...
	From ... to ...

7. Was an operation or autopsy performed? (specify) Yes By whom? Dr. Berges

What were the findings? Consolidated patches both lungs.

8. Was death due to suicide, homicide or accident? Unknown If due to an accident describe the same fully; if due to suicide or homicide, state the means employed Was bitten by a wood tick about 5/24/42 in mountain area about here reported Rocky Mountain Spotted Fever.

9. Give names and addresses of all other physicians and other practitioners who, to your knowledge, attended the deceased during the past three years.

Name	Address	Disease or Impairment
Dr. Leroy H. Briggs	San Francisco Calif	Physical examination
Dr. Wilfrid C. Reed	San Francisco Calif	Pneumonia

10. Did you see the body of the deceased, and was it that of the person described in your answer to No. 1 above? Yes

11. From what medical school and in what year did you graduate? Stanford Medical School - 1927

I hereby certify that the foregoing answers are true and full to the best of my knowledge, recollection and belief.

Date June 26, 1942 Signature Homer C Marston M.D.

Address 1010 B Street San Rafael City or Town Calif. State

FUNERAL DIRECTOR'S STATEMENT

NOTE—THIS IS NOT REQUIRED WHEN OFFICIAL CERTIFICATE OF DEATH IS FURNISHED

1. Name of the deceased in full? Arthur Barr

2. Residence: No. 477 Street Foster City or Town San Rafael State Calif

3. Deceased was Interred at Tamalpais Vale Cemetery on (Interred or Cremated) (Name of Place and Location) (Date)

4. Did you see the body of the said deceased, and do you know beyond a doubt that it was the body of the person described in the accompanying statement of the claimant? Yes

5. Date of birth of the deceased. (This date should be ascertained, if possible, from the family record.) August 16 1887

Dated at San Rafael this 27th day of June 1942

Funeral Director's Signature Lisa Galen

State of Calif. }
County of Marin } On this 27th day of June 1942 personally appeared before me the above named Lisa Galen (Funeral Director's Name) who is known to me, and who subscribed the foregoing before me and made oath that the answers to the foregoing questions are true and full to the best of his knowledge, recollection and belief.

(Notary sign here) Audrey Elizabeth Kesk

NOTARY PUBLIC in and for the County of Marin, State of California.

—23

EXHIBIT C

64 Classification

THIS PANEL IS FOR HOME OFFICE USE ONLY

PROOFS OF DEATH

Name of the Deceased

Date of Death 42-6-6

Cause of Death

Proofs Received 42-8-8

9-18

Policy No.

Approved for

By

MODES OF SETTLEMENT

If the Policy specifically provides for the payment of the policy proceeds in a single sum, and if the Mode of Settlement Options are contained in the Policy, the beneficiary may elect to have payment made in accordance with any of the following optional methods: (If the policy does not contain any provision for Modes of Settlement, such options may be available under the present rules of the Society. Information in this connection may be secured by writing to the Agency from which this Proof of Death Form was received or to the Department of Policy Claims at the Home Office. When writing, please refer to the Policy number and the name of the deceased.)

DEPOSIT OPTION:	Left on deposit with the Society at interest guaranteed at the rate provided for in the Policy, with such Excess Interest Dividend as may be apportioned. Interest may be paid annually, semi-annually, quarterly or monthly.
INSTALMENT OPTION: FIXED PERIOD OF YEARS.	Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments. Funds held under this option shall participate in Excess Interest Dividends as determined and apportioned by the Society.
LIFE INCOME OPTION:	Paid in equal annual, semi-annual, quarterly or monthly instalments for ten or twenty years certain (or any shorter certain period provided for in the policy) as may be elected and continuing during the remaining lifetime of the beneficiary. Under this option the income during the certain period elected shall be increased by Excess Interest Dividends as determined and apportioned by the Society. (If this option is elected the Society will require satisfactory evidence of the age of the beneficiary.)
INSTALMENT OPTION: FIXED AMOUNT.	Left with the Society as a fund to be credited anually with interest at the rate of 3% per annum on the unpaid balance and with such Excess Interest Dividend as may be apportioned, and from such funds shall be paid, until the fund is exhausted, periodic instalments of such amounts as may be agreed upon, the final instalment to be the balance then remaining with the Society.

For amounts and further details of the above optinns please refer to the Modes of Settlement contained in the Policy.

NOTE: The foregoing Modes of Settlement may not be elected if the amount to be applied shall be less than $1,000.

24 The options shall be available only if there is a personal beneficiary, i.e., other than an assignee, a corporatinn, partnership, association, trustee, executor, administrator or other fiduciary, etc.

25 EXHIBIT D

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 2nd day of November, in the year of our Lord one thousand nine hundred and forty-three.

Present: the Honorable Louis E. Goodman, D. J.

No. 22613-G
No. 22609-G—CIVIL

WILLIAM H. BARR, ETC., ET AL.

vs.

THE TRAVELERS INSURANCE COMPANY

This case came on this day for trial before the Court sitting without a jury. John J. Taaffe, Esq., appeared as attorney for plaintiffs, and Leo R. Friedman, Esq., appeared as attorney for defendant. The attorneys having orally stipulated thereto in open Court, it is Ordered that this case be and the same is hereby consolidated for trial with case No. 22613-R, Zeila Barr vs. The Equitable Life Assurance Society of the United States. Thereupon the two cases proceeded to trial. Mr. Taaffe made a statement to the Court on behalf of the plaintiffs. Mr. Mackey made a motion for judgment in favor of the defendant The Equitable Life Assurance Society of the United States, which said motion was ordered denied. Mr. Friedman made a motion for judgment in favor of the defendant The Travelers

Insurance Company, which said motion was ordered denied. Louis Nave, Le Roy H. Briggs, M.D., Malcolm H. Merrill, M.D., Monroe D. Eaton, M.D., and Karl F. Meyer, M.D., were sworn and testified on behalf of the plaintiffs. Mr. Friedman introduced in evidence and filed Defendants' Exhibit A. Ordered that the further trial of these cases be continued until November 3, 1943, at 10:00 o'clock A.M.

Minute Ordered Nov. 2, 1943. [26]

In the District Court of the United States for the Northern District of California, Southern Division

No. 22613-R

ZEILA BARR,

Plaintiff,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Defendant.

JUDGMENT OF DISMISSAL

The above entitled action, (after being consolidated for trial with William H. Barr, a minor, and Agnes O. Barr, a minor, by Zeila H. Barr, their guardian, v. The Travelers' Insurance Company, No. 22609-G, in the records of the above entitled court,) came on regularly for trial on November 2, 3, and 4, 1943, before the above entitled court, sitting without a jury, a jury having been expressly waived, John Taaffe, Esq., appearing for plaintiff, and Messrs.

Pillsbury, [27] Madison & Sutro by William MacKay, Esq., and Harlow P. Rothert, Esq., appearing for defendant; and all evidence on behalf of plaintiff having been introduced and the plaintiff having rested her case, defendant thereupon moved for dismissal of said action under Rule 41(b) of the Rules of Civil Procedure for the District Courts of the United States on the ground that upon the facts and the law the plaintiff had shown no right to relief, plaintiff having objected to said motion and said motion having been argued by the attorney for plaintiff and the attorneys for defendant, and the same having been submitted to the court for decision and the court having found that the said motion is meritorious and that upon the facts and the law plaintiff has shown no right to relief.

It is hereby Ordered, Adjudged and Decreed that the plaintiff take nothing in the above entitled action, that defendant recover from plaintiff its costs of suit, and that said action be and the same is hereby dismissed.

Dated: November 10th, 1943.

LOUIS E. GOODMAN
United States District Judge

Approved as to form as provided in Rule 22.

KEITH R. FERGUSON
JOHN J. TAAFFE
Attorneys for Plaintiff

[Enlarged]: Filed Nov 10, 1943. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Zeila Barr, the plaintiff in the above entitled action, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Final Judgment and Order of Dismissal heretofore, to-wit, on the 10th day of November, 1943, given, made and entered in and by the District Court of the United States for the Northern District of California, Southern Division, in the above entitled action, and from the whole of said judgment, which said Judgment is in the words and figures following, to-wit:

"The above entitled action, (after being consolidated for trial with William H. Barr, a minor, and Agnes O. Barr, a minor, by Zeila H. Barr, their guardian, v. The Travelers' Insurance Company, [29] No. 22609-G, in the records of the above entitled court,) came on regularly for trial on November 2, 3, and 4, 1943, before the above entitled court, sitting without a jury, a jury having been expressly waived, John Taaffe, Esq., appearing for plaintiff, and Messrs. Pillsbury, Madison & Sutro by William MacKay, Esq., and Harlow F. Rothert, Esq., appearing for defendant; and all evidence on behalf of plaintiff having been introduced and the plaintiff having rested her case, defendant thereupon moved for dismissal of said action under Rule 41(b) of the Rules of Civil Procedure for the District Courts of the United States on the ground that upon the facts and the law the plaintiff had shown

no right to relief, plaintiff having objected to said motion and said motion having been argued by the attorney for plaintiff and the attorneys for defendant, and the same having been submitted to the court for decision and the court having found that the said motion is meritorious and that upon the facts and the law plaintiff has shown no right to relief.

"It is hereby Ordered, Adjudged and Decreed that the plaintiff take nothing in the above entitled action, that defendant recover from plaintiff its costs of suit, and that said action be and the same is hereby dismissed.

"Dated: November 10, 1943.

LOUIS E. GOODMAN
United States District Judge"

Dated: January 31, 1944.

KEITH R. FERGUSON
JOHN J. TAAFFE
Attorney for Plaintiff

[Endorsed]: Filed Jan. 31, 1944. [30]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Now comes the above named plaintiff, and, pursuant to the provisions of Subdivision D of Rule 75 of the Federal Rules of Civil Procedure, files

this, her Designation of the Points on which she intends to rely on her Appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit Court.

1. That the said District Court erred in granting the motion of defendant for dismissal of said action under Rule 41B of the Rules of Civil Procedure for the District Courts of the United States.

2. That the said District Court erred in ruling that upon the facts and the law plaintiffs had shown no right to relief.

3. That the said District Court erred in finding that the [31] said motion was meritorious and that upon the facts and the law plaintiff had shown no right to relief.

4. That the evidence introduced and received upon the trial of said cause established prima facie the right of plaintiff to judgment as prayed for in her complaint on file herein, all of which from the reporter's transcript of the testimony and proceedings at the trial on file herin fully and at large appears.

Dated this 31st day of January, 1944.

JOHN J. TAAFFE
KEITH R. FERGUSON
Attorneys for Plaintiff and Appellant.

Receipt of a copy of the foregoing Statement of Points is hereby acknowledged this 1st day of February, 1944.

PILLSBURY, MADISON & SUTRO
NORBERT KORTE
Attorneys for Defendant and Appellee.

[Endorsed]: Filed Feb. 2, 1944. [32]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Comes now the above named plaintiff, and, pursuant to the provisions of Rule 75 of the Federal Rules of Civil Procedure files this, her Designation of the portions of the Record, Proceedings and Evidence to be contained in the Record on her Appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit:

1. The caption.
2. The names and addresses of counsel.
3. The complaint.
4. The order of removal of the cause from the Superior Court of the State of California, in and for the City and County of San Francisco, to the United States District Court for the [33] Northern District of California, Southern Division.
5. The answer of defendant.

6. The order consolidating the action for trial with the action entitled "William H. Barr, a minor, and Agnes D. Barr, a minor, by Zeila H. Barr, their guardian, vs. The Travelers Insurance Company", No. 22609 G.

7. The judgment of dismissal.

8. The notice of appeal.

9. The designation of contents of record on appeal.

10. Statement of points on which appellant intends to rely on the appeal.

Dated this 31st day of January, 1944.

JOHN J. TAAFFE
KEITH R. FERGUSON
Attorneys for Plaintiff and Appellant

Receipt of a copy of the within Designation of Contents of Record on Appeal acknowledged this 1st day of February, 1944.

PILLSBURY, MADISON & SUTRO
NORBERT KORTE
Attorneys for Defendant and Appellee.

[Endorsed]: Filed Feb. 2, 1944. [34]

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF RECORD DEEMED MATERIAL BY DEFENDANT

Comes now The Equitable Life Assurance Society of the United States, the defendant above named, and hereby designates, pursuant to Rule 75 of the Federal Rules of Civil Procedure, the following additional parts of the record in the above entitled cause to be contained in the record on plaintiff's appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

1. This defendant's petition for removal of cause to the Southern Division of the District Court of the United States for the Northern District of California, with certificate of County Clerk attached.

2. This designation.

Dated: San Francisco, California, February 10, 1944.

PILLSBURY, MADISON & SUTRO
NORBERT KORTE
Attorneys for The Equitable Life Assurance Society of the United States

Receipt of a copy of the foregoing designation of additional parts of record deemed material by defendant acknowledged this 10th day of February, 1944.

KEITH R. FERGUSON
JOHN J. TAAFFE
Attorneys for Zeila Barr,
Plaintiff

[Endorsed]: Filed Feb. 10, 1944. [35]

[Title of District Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD AND DOCKET CASE

Good cause appearing therefor,

It Is Hereby Ordered that the plaintiff in the above entitled action, who has heretofore appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment and Order of Dismissal heretofore given and made in this cause in and by this Court, may have and she is hereby granted to and including the 8th day of April, 1944, in which to file the Record on Appeal and docket the case in the said Circuit Court of Appeals.

Dated: March 3, 1944.

LOUIS E. GOODMAN
Judge, United States District Court.

[Endorsed]: Filed Mar. 3, 1944. [36]

District Court of the United States, Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 36 pages, numbered 1 to 36, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Zeila Barr, Plaintiff, v. The Equitable Life Assurance Society of the United States, Defendant, No. 22613-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Six-dollars and fifteen-cents ($6.15) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 6th day of April, A. D. 1944.

[Seal] C. W. CALBREATH
Clerk
WM. J. CROSBY
Deputy Clerk

[Endorsed]: No. 10729. United States Circuit Court of Appeals for the Ninth Circuit. Zeila Barr, Appellant, vs. The Equitable Life Assurance Society of the United States, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 7, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In The United States Circuit Court Of Appeals
For The Ninth Circuit

No. 10728

WILLIAM H. BARR, a minor, and AGNES D. BARR, a minor, by ZEILA H. BARR, their guardian,

Appellants,

vs.

THE TRAVELERS INSURANCE COMPANY,

Appellee.

ZEILA BARR,

Appellant,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Appellee.

ORDER CONSOLIDATING APPEALS FOR HEARING

The causes entitled as above having been consolidated for trial in the District Court, and the same evidence and proceedings in said District Court having been introduced upon the one trial as to both causes, and the questions presented by each of said appeals being the same and there being no necessity for printing the said evidence in separate transcripts; and counsel for the respective parties having stipulated thereto; it is therefore

Ordered that said appeals be consolidated for hearing in one transcript consisting of the pleadings and judgment roll in each of said actions, together with the several notices of appeal and the several designations of the portion of the record to be used on said appeal, and the several statements of the points relied upon by the appellants on said appeal with a single transcript of the testimony and proceedings taken and had in the said District Court on the trial of said consolidated actions.

Dated this 11th day of February, 1944.

CURTIS D. WILBUR
United States Circuit Judge

The foregoing Order is hereby consented to.

JOHN J. TAAFFE
KEITH R. FERGUSON
Attorneys for Appellants.

JOS. T. O'CONNOR
LEO R. FRIEDMAN
Attorneys for Appellee, The Travelers Insurance Company.

PILLSBURY, MADISON & SUTRO
NORBERT KORTE
Attorneys for Appellee, The Equitable Life Assurance Society of the United States

[Endorsed]: Filed Feb. 11, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: Re-Filed Apr. 7, 1944. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10729

ZEILA BARR,

Appellant,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Appellee.

STATEMENT OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Now comes the above named appellant and pursuant to the provisions of Section 6 of Rule 19 of this Court files this, her Statement of the Points on which she intends to rely on the appeal and designates herewith the parts of the record which she thinks necessary for the consideration thereof. In this behalf the said appellant hereby adopts her Statement of Points on which Appellant Intends to Rely on Appeal filed in the District Court of the United States for the Northern District of California, Southern Division, the Court from which this appeal is taken, which said statement is a part of the Record on Appeal in the above entitled cause; and appellant hereby designates all of the said Record on Appeal as necessary for the consideration of this appeal.

Dated, this 8th day of April, 1944.

KEITH R. FERGUSON
JOHN J. TAAFFE
Attorneys for Appellant

Receipt of a copy of the within Statement is hereby acknowledged this 8th day of April, 1944.

PILLSBURY, MADISON & SUTRO
Attorneys for Appellee

[Endorsed]: Filed April 8, 1944. Paul P. O'Brien, Clerk.